

1 WO
2
3
4

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA
7

8 Julio Rodriguez,) No. CV-08-1217-PHX-LOA
9 Plaintiff,) ORDER
10 vs.)
11 Kentucky Fried Chicken,)
12 Defendant.)
13

14 This case arises upon the Court's review of the file and *pro se* Plaintiff's
15 timely-filed Amended Complaint, filed in an effort to comply with both the Court's July 9,
16 2008 order and, among others, Rule 8(a)(2), Federal Rules of Civil Procedure, by the July
17 22, 2008 deadline. Plaintiff has consented in writing to magistrate-judge jurisdiction
18 pursuant to 28 U.S.C. § 636(c). (docket # 4) Although the *pro se* Amended Complaint does
19 not allege the statutory basis for the Court's limited jurisdiction, it is clear that Plaintiff
20 invokes this Court's federal question jurisdiction (28 U.S.C. §1331).

21 A fair comparison of the original Complaint and the Amended Complaint
22 reveals that these pleadings are nearly identical: both are one page in length, both allege
23 violations of Title VII, the Americans With Disabilities Act ("ADA") and/or the Age
24 Discrimination in Employment Act ("ADEA") and, perhaps, most importantly, neither the
25 Complaint nor the Amended Complaint allege any specific facts claims describing the acts
26 or omissions of Defendant which allegedly violate the various Acts. In fact, the Amended
27 Complaint only contains the conclusory allegation that Plaintiff "ha[s] been discriminated
28 against by being terminated from [his] employment with Kentucky Fried Chicken." (docket

1 # 5) The only attachment to the Amended Complaint is a copy of Rule 8, FED.R.CIV.P.
 2 Although the original Complaint also lacked factual allegations, at least Plaintiff attached
 3 thereto copies of the EEOC's January 30, 2008 cover letter, dismissal notice and notice of
 4 right to sue within 90 days.¹

5 Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss a
 6 complaint with prejudice for failure to comply with Rule 8(a). *Hearns v. San Bernardino*
 7 *Police Department*, ___ F.3d ___, 2008 WL 2579243 (9th Cir. 2008) (citing *Nevijel v. North*
 8 *Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981)). The Ninth Circuit in *Hearns* sets
 9 forth an excellent compendium of circuit authority in which complaints were dismissed for
 10 failure to comply with Rule 8(a)'s mandate that a complaint "must contain . . . a short and
 11 plain statement of the claim **showing that the pleader is entitled to relief.**" Rule 8(a)(2),
 12 FED.R.CIV.P. (emphasis added). "Under Rule 8(a), the plaintiff must give the defendant fair
 13 notice of what the . . . claim is and the grounds upon which it rests." *Mendiondo v.*
 14 *Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (internal citation and
 15 quotation marks omitted). On the other hand, a complaint need not contain detailed factual
 16 allegations, but it must provide more than "a formulaic recitation of the elements of a cause
 17 of action." *Bell Atl. Corp. v. Twombly*, ___ U.S. ___, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929
 18 (2007).

19 In *Hearns*, the majority acknowledged that "[t]he FAC [first amended
 20 complaint] and the original complaint contain excessive detail," but held that an 81-page
 21 Complaint and 68-page First Amended Complaint, filed by counsel, should not have been
 22 dismissed with prejudice by the district court because they "were intelligible and clearly
 23 delineate the claims and the Defendants against whom the claims are made. . . Here, the
 24 Defendants should have no difficulty in responding to the claims with an answer and/or with
 25 a Rule 12(b)(6) motion to dismiss." *Hearns*, 2008 WL 2579243 * 6. The majority in *Hearns*

27 ¹ If the 90 days were to begin to run on January 30, 2008, Plaintiff was required to file
 28 his complaint on or before April 29, 2008. Plaintiff's Complaint was filed on July 1, 2008.
 This issue will not be addressed at this time *sua sponte*.

1 also stated that the district court has inherent “remedial authority to relieve a defendant of
2 the burden of responding to a complaint with excessive factual detail. One option would have
3 been to simply strike the surplusage from the FAC.” *Id.* Another option is “the judge could
4 have excused Defendants from answering those [relevant but unnecessary] paragraphs.” *Id.*

5 In *Hearns*, the majority and minority affirmed as valid circuit authority
6 *McHenry v. Renne*, 84 F.3d 1172 (9th Cir.1996). *Hearns*, 2008 WL 2579243 at * 4. In
7 *McHenry*, the Ninth Circuit concluded that the district court had not abused its discretion in
8 dismissing a complaint pursuant to Rule 12(e) because the trial judge “had already given the
9 plaintiffs multiple opportunities to comply, along with specific instructions on how to correct
10 the complaint.” *McHenry*, 84 F.3d 1172.

11 “The failure of a complaint to state a claim upon which relief can be granted
12 is usually dealt with by a motion made under Rule 12(b)(6), while the need for supplying a
13 more definite statement is ordinarily brought before the court by a motion invoking Rule
14 12(e).” *Gillibeau v. City of Richmond*, 417 F.2d 426, 431-32 (9th Cir.1969) (cited
15 approvingly in *Hearns*). “However, in an aggravated case a district court has discretion to
16 dismiss an action for failure to comply with the requirement of Rule 8(a)(2).” *Id.* (citing
17 *Corcoran v. Yorty*, 347 F.2d 222 (9th Cir. 1965)); *Agnew v. Moody*, 330 F.2d 868, 870-871
18 (9th Cir. 1964). “But, as exemplified by *Corcoran* and *Agnew*, a dismissal for a violation
19 under Rule 8(a)(2), is usually confined to instances in which the complaint is so ‘verbose,
20 confused and redundant that its true substance, if any, is well disguised.’” *Id.* A decision to
21 dismiss a complaint pursuant to Rule 8 is within the trial court’s sound discretion. *Gillibeau*,
22 417 F.3d at 431.

23 Plaintiff’s Amended Complaint presents the converse problem addressed in
24 *Hearns*. Rather than being verbose, the Amended Complaint in this case includes no factual
25 allegations explaining how Defendant discriminated against Plaintiff by terminating his
26 employment. The Amended Complaint truly contains a “short and plain statement” of the
27 grounds and claims. The Amended Complaint alleges no facts required by Federal Rule of
28 Civil Procedure 8(a), to show a basis for Defendant’s liability under Title VII, the ADA or

1 the ADEA. Stated differently, the Amended Complaint does not ““state[] clearly how
2 [Defendant] is alleged to have violated plaintiff[’s] legal rights . . . and [does not] focus on
3 linking [any] factual allegations to [his] actual legal claims.”” *Hearns*, at * 4 (citing
4 *McHenry*, 84 F.3d at 1176) (quoting district court’s order). While the Amended Complaint
5 gives Defendant fair notice of the nature of the claims (violation of Title VII, the ADA and
6 the ADEA), it does not give Defendant fair notice of “the grounds upon which [such claims]
7 rest[].” *Mendiondo*, 521 F.3d at 1104. Moreover, the Court does not have the options,
8 discussed in *Hearns*, to order, for example, that Defendant need not answer certain verbose
9 or extraneous allegations. This is an aggravated case of failure to comply with Rule 8(a)(1)
10 and (2) and the Court concludes that it is unfair and inconsistent with Fed.R.Civ. P. 1 to
11 require Defendant to incur unnecessary attorney’s fees to file a motion for more definite state
12 due to Plaintiff’s failure *ab initio* to comply with Rule 8.

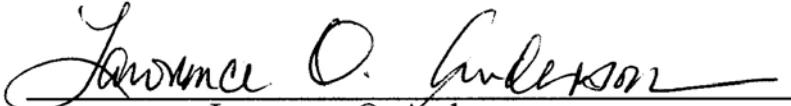
13 In view of the foregoing, the Court will give Plaintiff one final opportunity to
14 amend his Complaint to comply with this order and Fed. R. Civ. P. 8(a).

15 Accordingly,

16 **IT IS ORDERED** that on or before **Monday, August 18, 2008**, Plaintiff shall
17 file a Second Amended Complaint setting forth with specificity factual allegations describing
18 how Defendant, through its identified employees, allegedly violated Plaintiff’s legal rights
19 under Title VII, the ADA, and the ADEA.

20 **IT IS FURTHER ORDERED** that failure to comply with this order may
21 result in dismissal of Plaintiff’s lawsuit with prejudice (meaning it cannot be refiled) pursuant
22 to Fed.R.Civ. P. 41(b), Fed.R.Civ.P. 8, or the Court’s inherent power. *Ferdik v. Bonzelet*, 963
23 F.2d 1258,1260 (9th Cir. 1992) (trial courts have the inherent power to control their dockets
24 and may impose sanctions including, where appropriate, dismissal of a case).

25 Dated this 30th day of July, 2008.

26
27 
28 Lawrence O. Anderson
United States Magistrate Judge
- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28